

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
CLARK REFINING AND MARKETING,	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

The United States of America, by the authority of the Attorney General and through its undersigned attorneys, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("USEPA"), alleges as follows:

I. NATURE OF ACTION

1. This is a civil action brought pursuant to Section 113(b) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C.

§ 7413(b), for injunctive relief and the assessment of civil penalties against Clark Refining and Marketing, Inc. ("Clark")

for violations of the federally enforceable Illinois State Implementation Plan ("SIP") established pursuant to Section 110 of the Act, 42 U.S.C. § 7410, and the regulations at 40 C.F.R.

§ 52.21 through 52.33 governing the prevention of significant deterioration of air quality (the "PSD regulations"), which are incorporated by reference into the Illinois SIP. The violations alleged occurred at Clark's petroleum refinery in Hartford, Illinois.

## II. JURISDICTION, VENUE AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b),(c), and 1395(a).

4. Pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a), USEPA notified Clark and the State of Illinois of the violations of the Illinois SIP alleged in this complaint more than 30 days prior to its filing.

5. Notice of the commencement of this action has been given to the Illinois Environmental Protection Agency ("IEPA") pursuant to Section 113(b) of the Act, 42 U.S.C. §

7413(b).

### III. DEFENDANT

6. Clark is a Delaware corporation duly authorized to do business in the State of Illinois.

7. Clark is engaged in the business of petroleum refining and the marketing of gasoline at over 840 service stations throughout the Midwest.

8. Clark owns and operates a petroleum refinery located at 201 Hawthorne Street, Hartford, Illinois (the "Hartford refinery").

9. Clark is a "person" within the meaning of Sections 113(b) and 302(e) of the Act, 42 U.S.C. §§ 7413(b) and 7602(e).

### IV. STATUTORY AND REGULATORY BACKGROUND

#### A. General Provisions: NAAQS and SIPs

10. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air, so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1), 42 U.S.C. § 7401(b)(1).

11. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires USEPA to establish a list of pollutants which cause or contribute to air pollution which may reasonably be

anticipated to endanger public health or welfare and which are emitted from numerous or diverse stationary or mobile sources.

12. Section 109(a) of the Act, 42 U.S.C. § 7409(a), requires USEPA to establish National Ambient Air Quality Standards ("NAAQS") for certain pollutants. Primary NAAQS are standards that, with an adequate margin of safety, are required to protect the public health; secondary NAAQS are standards required to protect the public from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. The NAAQS promulgated by USEPA pursuant to Section 109(a) of the Act are found in 40 C.F.R. Part 50.

13. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit to USEPA for approval a State Implementation Plan which provides for implementation, maintenance and enforcement of NAAQS established under Section 109 of the Act.

14. Pursuant to Section 110 of the Act, 42 U.S.C.

§ 7410, the State of Illinois had adopted and submitted to USEPA various regulations that have been approved by USEPA and that, taken together, constitute a SIP providing for attainment, maintenance and enforcement of NAAQS within the

State.

15. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), SIP provisions that have been approved by USEPA are federally enforceable.

B. Illinois SIP Requirements for Particulate Matter

16. Particulate matter is an air pollutant within the meaning of Sections 108 and 302 of the CAA, 42 U.S.C. §§ 7408 and 7602.

17. Pursuant to Section 109 of the Act, 42 U.S.C. § 7409, on November 21, 1971, USEPA promulgated regulations establishing primary and secondary NAAQS for six criteria pollutants, including particulate matter ("PM"), nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>).

18. On May 31, 1972, USEPA approved Illinois SIP rules relating, among other things, to PM from various fuel combustion sources. 37 Fed. Reg. 10862. These Illinois SIP provisions include rules governing particulate matter emissions for catalyst regenerators of fluidized catalyst converter units at oil refineries.

19. Illinois Pollution Control Board ("IPCB") Rule 203(d)(1) (now recodified at 35 Illinois Administrative

Code("IAC")

§ 212.381), which is part of the Illinois SIP, establishes a mass limitation for catalyst regenerators of fluidized catalytic converters using the following formula:

$$E = (55.0 (P)^{0.11}) - 40.0$$

where E= allowable emission rate in pounds per hour, and P= catalyst recycle rate, including amount of fresh catalyst added in tons per hour for catalyst recycle rates greater than 30 tons per hour.

20. IPCB Rule 203(h) (now recodified at 35 IAC § 212.110), which is part of the Illinois SIP, provides measurement methods for PM emissions, including the use of stack tests conducted in accordance with 40 C.F.R. Part 60, Method 5.

C. Illinois SIP Permit Requirements

21. IPCB Rule 103(b)(2)(now recodified at 35 IAC § 201.144), which is part of the Illinois SIP, among other things, prohibits operation of any existing emission source without first obtaining an operating permit.

D. PSD Requirements

22. Part C of Title I of the Act (42 U.S.C. §§ 7470-7492) contains provisions addressing the prevention of significant deterioration of air quality in areas designated as in attainment of NAAQS, to assure that economic growth will occur in a manner consistent with preservation of existing

clean air resources and that any decision to permit increased air pollution will be made only after careful evaluation of all the consequences of such a decision. These statutory provisions and the implementing regulations at 40 C.F.R. § 52.21(b) through (w) constitute the Prevention of Significant Deterioration ("PSD") program.

23. Pursuant to Sections 110(a)(2)(C) and 161 of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and 7471, State SIPs, among other things, must include a program to provide for the modification, construction, and operation of any stationary source of air pollution, including a permit program as required under Part C of the Act, 42 U.S.C. §§ 7470-7479, relating to the prevention of significant deterioration of air quality in areas that attain the NAAQS ("attainment areas") or areas that are unclassifiable because of insufficient data.

24. Pursuant to 40 C.F.R. § 52.738(b), the federal PSD regulations at 40 C.F.R. § 52.21(b) through (w) have been incorporated by reference into and are part of the Illinois SIP.

25. The permitting requirements of the PSD regulations apply to the construction of a "major stationary source" or a "major modification" to an "existing stationary source" in an area designated pursuant to Section 107(d)(1) of

the Act, 42 U.S.C. § 7407(d)(1), and 40 C.F.R. § 52.21(i)(3), as an attainment area or as unclassifiable with respect to attainment.

26. The Act and the PSD regulations define "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant" which is subject to regulation under the Act. 42 U.S.C. § 7411(a)(3); 40 C.F.R. § 52.21(b)(5).

27. The PSD regulations define "major stationary source", in the case of petroleum refineries, as "any stationary source which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(1)(i)(b).

28. The PSD regulations define "major modification" as a physical or operational change at an existing major stationary source that would result in a "significant net emissions increase of a pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i).

29. Net emissions increases for nitrogen oxides ("NO<sub>x</sub>") and sulfur dioxide (SO<sub>2</sub>) are "significant" if they equal or exceed 40 tons per year. 40 C.F.R. § 52.21(b)(23)(i). A net increase in particulate emissions is "significant" if it equals or exceeds 25 tons per year.



30. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i) prohibit construction and operation of a major stationary source or major modification to a major stationary source in any attainment area or area designated as unclassifiable with respect to a particular pollutant unless a permit has first been issued for the proposed facility or modification pursuant to the applicable PSD regulations.

31. As part of the PSD permitting process, Section 165(a)(4) of the Act, 42 U.S.C. § 7475(a)(4), and 40 C.F.R. § 52.21(j) require that a facility that conducts a major modification of a major source apply best available control technology ("BACT") for each pollutant subject to regulation under the Act for which the physical change or change in the method of operation results in a significant net emissions increase.

#### E. Enforcement Provisions

32. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction and for assessment of civil penalties whenever a person has violated or is in violation of any requirement or prohibition in the Act or in any applicable State Implementation Plan. Pursuant to Section 113(b), 42 U.S.C. § 7413(b), persons who violate the Act or an applicable

SIP provision are liable for civil penalties of up to \$25,000 per day for each violation occurring prior to January 31, 1997. Pursuant to Section 113(b) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360 (December 31, 1996), such persons are liable for civil penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997.

33. The PSD regulations incorporated into the Illinois SIP provide further that any owner or operator of a major stationary source or major modification who commences construction without applying for and receiving a PSD permit shall be subject to enforcement action. 40 C.F.R. § 52.21(r).

#### GENERAL ALLEGATIONS

34. Clark 's Hartford facility includes a fluid catalytic converter unit ("FCCU").

35. Clark performed stack tests on emissions from the stack serving its FCCU on September 9, 1993, February 8 and March 1, 1994, and March 22, 1994. Clark also performed stack tests on June 5, 1996 and July 24, 1996.

36. The catalyst recycle rate of the catalyst regenerator at Clark's FCCU was determined for each of the stack tests itemized in the preceding paragraph.

37. Using the catalyst recycle rate for each stack test and the formula in IPCB Rule 203(d)(1) (see ¶ 18, supra),

the particulate emission limit was calculated for each date on which a Clark stack test was conducted.

38. On August 27, 1993, the Illinois Environmental Protection Agency ("IEPA") issued an operating permit to Clark for its FCCU, which expired on February 28, 1994.

39. On March 9, 1994, Clark submitted a renewal application to IEPA for the FCCU operating permit.

40. The March 9, 1994 renewal application did not demonstrate compliance with the applicable PM emission limit for the FCCU.

41. On April 19, 1994, Clark applied for a construction permit for modifications to the internal cyclones in its FCCU.

42. On July 8, 1994, IEPA issued a construction permit to Clark for modifications to internal cyclones in the FCCU.

43. The July 8, 1994 construction permit included a provision that allowed Clark to operate the FCCU for 180 days after the FCCU cyclone modifications were completed.

44. On September 9, 1994, Clark ceased operation of the FCCU to conduct modifications of the internal cyclones.

45. On October 13, 1994, Clark resumed operation of the FCCU after completion of the FCCU cyclone modifications.

46. On April 10, 1995, the limited permission to operate contained in the July 8, 1994 construction permit expired.

47. On March 7, 1995, IEPA issued a new operating permit to Clark for the FCCU.

48. Clark's Hartford refinery is in an area designated as unclassifiable for PM, NOx and SO<sub>2</sub>. 40 C.F.R. § 81.314.

49. During the 1994 modification, Clark made several physical changes to its FCCU, including the change from four internal cyclones to six smaller cyclones, installation of an auxiliary blower, and changes to its wet gas compressor.

50. The physical changes made in 1994 which are itemized in the preceding paragraph produced a potential net emissions increase exceeding 25 tons per year for particulate matter and 40 tons per year for NOx and SO<sub>2</sub>.

51. The 1994 physical changes to the FCCU constitute a "major modification" to the FCCU within the meaning of 40 C.F.R. § 52.21(b)(2)(i).

52. Clark at no time obtained a PSD permit to construct and operate the major modifications to its FCCU.

53. On July 8, 1994, the Director of the Air and

Radiation Division, USEPA Region V, by duly delegated authority issued a Notice of Violation ("NOV") to Clark, pursuant to Section 113(a)(1) of the Act, 42 U.S.C.

§ 7413(a)(1), for violation of the particulate matter emission limitation in the Illinois SIP applicable to FCCU catalyst regenerators.

54. On May 8, 1995, the Director of the Air Division, USEPA Region V, by duly delegated authority, issued an NOV to Clark for failure to submit an application for renewal of its FCCU operating permit at least 90 days prior to expiration of its existing permit.

55. On June 19, 1997, the Director of the Air Division, USEPA Region V, by duly delegated authority, issued an NOV to Clark for violation of the particulate matter emission limitation in the Illinois SIP applicable to FCCU catalyst regenerators.

56. On May 19, 1997, the Director of the Air and Radiation Division, USEPA Region V, by duly delegated authority, issued an NOV to Clark for its construction and operation of a major modification to a major stationary source without a PSD permit, in violation of the Act, and the PSD regulations incorporated into the Illinois SIP.

FIRST CLAIM FOR RELIEF

57. The allegations in Paragraphs 1 through 56 are incorporated herein by reference.

58. The FCCU at Clark's Hartford facility is subject to the PM emissions limit in the federally enforceable Illinois SIP.

59. Clark's stack tests performed on emissions from its FCCU catalyst regenerator unit on September 9, 1993, February 8 and March 1, 1994, and June 5, 1996, indicated particulate matter emissions for each of these days at a rate greater than the allowable PM emission rate in IPCB Rule 203(d)(1).

60. Clark's stack tests on March 22, 1994 and July 24, 1996 demonstrated compliance with the PM emission limits in the Illinois SIP applicable to the catalyst regenerator associated with Clark's FCCU.

61. From at least September 9, 1993 through March 21, 1994 and from at least June 5, 1996 through July 23, 1997, Clark exceeded the Illinois SIP PM emission limits applicable to the catalyst regenerator associated with its FCCU.

62. More than 30 days have passed following the July 8, 1994 and June 19, 1997 dates on which NOV's pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), were issued to Clark with respect to the PM emission limit violations alleged

in the preceding paragraph.

63. Pursuant to Section 113(b) of the Act, U.S.C. 42 § 7413(b), Clark is subject to a civil penalty of up to \$25,000 per day for each day within the applicable limitation period, plus time covered by applicable tolling agreements, that it failed to comply with the SIP emission limits for PM applicable to the catalyst regenerator associated with its FCCU.

#### SECOND CLAIM FOR RELIEF

64. The allegations in Paragraphs 1 through 56 are incorporated herein by reference.

65. Clark's FCCU at its Hartford facility is subject to the Illinois SIP permit requirements in IPCB Rule 103(b)(2).

66. On February 28, 1994, Clark's operating permit for its FCCU expired.

67. Clark continued to operate the FCCU from March 1, 1994 through September 9, 1994, without a permit, in violation of IPCB Rule 103(b)(2).

68. More than 30 days have passed following the May 8, 1995 date on which an NOV was issued to Clark with respect to the violation alleged in the preceding paragraph.

69. Pursuant to Section 113(b) of the Act, U.S.C.

§ 7413(b), Clark is subject to a civil penalty of up to \$25,000 per day for each day it operated its FCCU without an applicable permit.

### THIRD CLAIM FOR RELIEF

70. Paragraphs 1 through 56 are realleged and incorporated herein by reference.

71. Clark constructed a major modification to its FCCU which it has operated and continues to operate without a PSD permit and without applying best available control technology, in violation of the Act and the PSD regulations promulgated pursuant to the Act and incorporated into the Illinois SIP.

72. More than 30 days have passed following the May 19, 1997 date on which an NOV with respect to the violation alleged in the preceding paragraph was issued to Clark pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

73. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), Clark is subject to injunctive relief and civil penalties of up to \$25,000 a day for each day prior to January 31, 1997 on which it failed to comply with applicable PSD requirements and up to \$27,500 a day for violations occurring on or after January 31, 1997.



74. Unless restrained by Order of this Court, Clark will continue to violate the Act and the PSD regulations promulgated pursuant to the Act and incorporated into the Illinois SIP.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States respectfully requests that this Court:

1. Permanently enjoin defendant Clark from further violations of the Clean Air Act and the Illinois SIP;

2. Assess civil penalties of up to \$25,000 per day for each violation by Clark of the Act and the Illinois SIP prior to January 31, 1997 and up to \$27,500 per day for each violation occurring on or after January 31, 1997;

3. Award plaintiff its costs and disbursements in this action; and

4. Grant such other and further relief as the Court may deem appropriate.

January , 1999

Respectfully submitted,

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